IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 562 OF 1980

Housabai Wd/o Shankar Taralkar
since deceased through her heir
1-A Mandodari Wd/o Shankar Amane .. **Appellant.**

v/s.

1. Khanderao Dattatraya Doiphode
since deceased through his heirs
1-A Smt. Bhagirathibai Khanderao
Doiphode and ors. .. **Respondents.**

Shri A.Y.Sakhare,Sr. counsel with Shri S.M.Kamble
advocate for the appellant.
Shri N.V.Walawalkar, advocate for the respondent No.1

CORAM: A.S.OKA, J.

DATE : 12TH JULY, 2004.

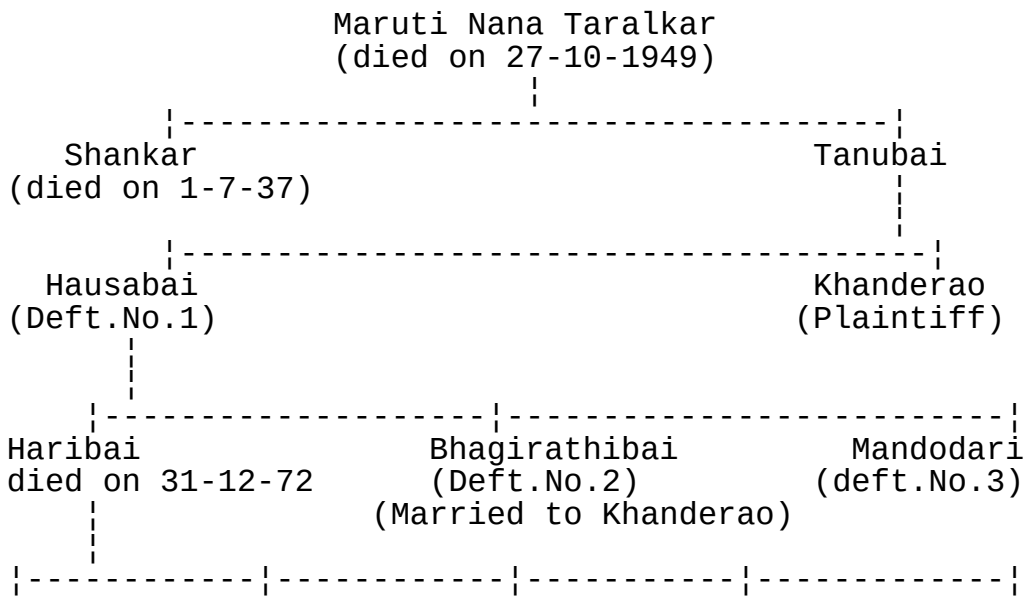
ORAL JUDGMENT :-

1. This Second appeal was admitted by this Court by order dated 7th August, 1980 by observing that the Second Appeal is admitted on the points mentioned in

ground No.18 of the Memorandum of appeal. The Ground No.18 of the Memorandum of appeal reads thus :-

"The learned Judge wrongly not applied provisions of Section 14(1) of the Hindu Succession Act of the properties (including the assets called as self-acquisition) which came to be given to the plaintiff under the will of Maruti.

2. I have heard the counsel appearing for the parties on the aforesaid substantial question of law. With a view to appreciate the controversy involved in the appeal, it is necessary to briefly refer to the facts of the case. The genealogy showing the relationship between the parties is as under :



Ramesh (Deft.No.4) Bansilal (Deft.No.5) Shalini (Deft.No.6) Dilip (Deft.No.7) Parubai (Deft.No.8)

The appellant is the original defendant No.1. The Respondent No.1 is the original plaintiff and the respondent No.2 to 8 are the original defendant No.2 to 8. The suit property consists of one house, two open sites and four agricultural lands which are described in Schedule-I to the plaint. The suit property was originally owned by Maruti Nana who died on 27th October, 1949. Maruti had a son Shankar and daughter Tanubai. The son Shankar predeceased Maruti on 1st July, 1937. The Appellant-Defendant No.1 Housabai is the widow of Shankar. Shankar had 3 daughters by the names Haribai, Bhagirathibai and Mandodari. Haribai expired on 31st December, 1972 and the respondent No.4 to 8 are the legal representatives of Haribai. Tanubai had a son by the name Khanderao who is the original plaintiff/respondent No.1. The said Khanderao married to Bhagirathibai(Deft.No.2/respondent No.2) who is incidentally the daughter of Shankar and Housabai.

3. According to the respondent No.1/plaintiff, the suit property was self-aquired property of Maruti. On 24th October, 1949, Maruti executed a will. According to the respondent No.1, Maruti had kept a mistress from

whom three sons and one daughter were born to him. As per the will, Maruti gave some of his movables to the sons of his mistress and remaining movable property was bequeathed to the Appellant and the Respondent No.1. According to the Respondent No.1, will provided that the Appellant and the Respondent No.1 were to enjoy all immovable property of Maruti jointly during their life time. However, the Appellant was given only life interest in the immovable property and she was not allowed to alienate property in any manner and the property was to go to the Respondent No.1 after her life time. The Respondent No.1 filed a suit for declaration of his title on the basis of the said will and for permanent injunction against the Appellant and Respondent No.3 to 8. Contention of the Respondent No.1 is that the Appellant had executed a gift deed dated 15th July, 1972 in respect of some of the properties in favour of some of the Defendants. Respondent No.1 also challenged the gift deed executed by the Appellant on the ground that the Appellant had only a life interest and had no power to execute the gift deed.

4. The suit was resisted only by the Appellant by filing written statement. The Appellant contended that

all the properties comprising of suit property were joint family properties of Maruti and Shankar and were not self-acquisition of Maruti. The Appellant submitted that Nana,the father of Maruti was doing ancestral business of dealing in yarn and clothes and there were ancestral movable properties and ornaments. Nana was carrying on ancestral business of weaving and also indulged in money-lending. Maruti inherited all the ancestral property from Nana. Maruti did not do any separate business and had no separate source of income. Although some of the suit properties are purchased by Maruti, they were purchased with the help of ancestral joint family funds. The appellant denied the execution of the will by Maruti. She contended that In any event, Maruti had no authority to execute the will.

5. The learned Trial Judge dismissed the suit filed by the Respondent. In an Appeal preferred by the Respondent, the learned District Judge interfered and partly decreed the suit in favour of the Respondent. The Appellate Court held that properties at Sr.Nos.1 and 2 in Schedule 1-A and the open site at Sr.No.3 in Schedule 1-B were self-acquisitions of Maruti. Therefore, the Appellate Court granted declaration that

the Respondent No.1 had a reversionary right in respect of the said properties and the Appellant who was having only life interest over the said property was not entitled to alienate the same. Hence declaration was granted that gift deed executed by the appellant in respect of land bearing Survey No. 327/2 was not binding on respondent No.1 after the death of appellant. Being aggrieved by the Judgment and decree of the Appellate Court, the Appellant(Defendant No.1) has preferred this Second Appeal.

6. Shri Sakhare, the learned senior counsel appearing for the appellant submitted that the will executed by Maruti was not duly proved and findings recorded by the court in that behalf are perverse. He submitted that all the properties comprising of suit property were ancestral properties held by Maruti and therefore, will could not have been executed in respect of the said properties by Maruti. He submitted that even assuming that the will was valid, section 14(1) of the Hindu Succession Act, 1956, will apply and the suit property in respect of which life interest in perpetuity is created will become absolute property of the appellant. The learned counsel for the Appellant relied upon various judgments which are as under :

(i) AIR 1961 Punjab Page 395(Jai Ram Devi Ditta V/s Tota Ram Hardev Ram).

(ii) AIR 1963 Orissa Page 167(Ganesh Mahanta and Ors. V/s Sukria Bewa and Ors.)

(iii)AIR 1965 Madras Page 497(Chinnakolandai V/s Thanji Gounder & Ors.)

(iv) AIR 1970 Supreme Court Page 1963(Badri Pershad v/s Smt. Kanso Devi.)

(v) AIR 1970 Punjab & Haryana Page 309(Jagat Singh & Ors V/s Teja Singh & Ors.)

(vi) 1999(1) Bom.C.R. Page 119(Raghubar Singh & Ors. V/s Gulab Singh & ors.)

7. The learned counsel appearing for the respondent No.1 Shri Walawalkar submitted that a clear finding of fact has been recorded by both the courts below as regards execution of the will by Maruti. He pointed out the finding of fact recorded by the District Court to the effect that certain properties out of the suit

properties were self-acquired properties of Maruti. He submitted that the said finding of fact cannot be disturbed in Second Appeal. He submitted that in view of section 14(2) of the said Act 1956, the appellant is not entitled to benefit of sub-section (1) of section 14 of the Act.

8. I have carefully considered the submissions of counsel appearing for the parties. In so far as the proof of will executed by Maruti is concerned, though the trial court dismissed the suit filed by the respondent, the trial court accepted the case of the respondent No.1 that Maruti had executed a will dated 24th October, 1949. The appellate court has referred to the evidence on record, especially the evidence of one of the attesting witness to the will and evidence of the scribe of the will. The appellate court has also referred to the fact that the will was duly registered in the office of sub-registrar. After having appreciated the oral evidence on record, the appellate court has confirmed the finding of the trial court on this aspect. In my view, the said finding is neither perverse nor illegal.

9. The second contention of the learned counsel

appearing for the appellant is that none of the properties in the suit were self-acquired properties of Maruti. He submitted that the appellant had established that there was a nucleus available of the joint family property from which properties comprising of suit property were purchased. By referring to the paragraph-16 of the Appellate Court Judgement, the learned counsel made a grievance that only prima facie finding has been recorded by the Appellate Court. Perusal of paragraph-16 of the Judgment shows that though the appellate court has used the word "prima-facie", the entire evidence has been considered and finding of fact has been recorded. The appellate court came to the conclusion that the father of Maruti was holding landed property having area of not more than 2 acres and 13 gunthas. There was no evidence to show that Nana had purchased or possessed any other property. After considering evidence in that behalf, the appellate court came to the conclusion that there was no evidence led by the appellant No.1 to show that Nana had left sufficient funds or moveables which Maruti had inherited or that the properties purchased under sale deed at Exh. 57 could have been purchased by Maruti with the aid of the said funds. The learned Judge rejected the observations made by the learned

trial Judge that Nana was holding more than 20 acres of land. After considering the evidence carefully, the appellate court came to the conclusion that the properties purchased under the sale deed at Exh. 57 were self-acquisitions of Maruti and rest of the properties cannot be held to be as self-acquired properties of the Maruti. After having perused said finding recorded by the learned appellate court and after having perused the pleadings and notes of evidence, I am of the view that the said finding is based on legal evidence on record and there is no perversity in the same.

10. This takes me to last submission made by the learned Senior counsel for the appellants. He submitted that the life interest which was created in favour of the appellant will become full interest by virtue of Section 14(1) of the said Act, 1956. Relying upon the judgments to which reference has been made earlier, he submitted that where a Hindu widow, a limited owner, is possessed of a property when the Hindu Succession Act, 1956 came into force, she becomes its full owner by virtue of provision of Section 14(1) of the Act. He therefore, submitted that the respondent No.1 as a reversioner was not entitled to

challenge alienation made by the appellant by way of gift deed. He relied upon the judgment of Punjab High Court in the case of **Jai Ram Devi Ditta** as well as the judgment of Madras High Court in the case of **Chinnakolandai** in support of his contention. He submitted that the contention of the Respondent No.1 that as the suit was filed by the Respondent No.1 after coming into force the Act, 1956, gift deed executed by appellant will not bind him after demise of Appellant was not tenable in view of section 14(1) of the said Act, 1956. The learned counsel has also relied on the judgment of Apex Court in Badri Pershad's case and Judgment of Full Bench of Punjab and Haryana High Court in case of Jagat Singh.

11. It is pertinent to note that the Appellate Court has granted relief to the Respondent No.1 only in respect of those properties out of the suit properties which have been held as self-acquired properties of Maruti. As Shankar is the son of Maruti who predeceased him, the Appellant being the widow of Shankar, could not have claimed any right or interest in respect of self-acquired property of Maruti during his life time. Therefore, Maruti had absolute right to execute a will in respect of his self-acquired

property. Accepting case of the appellant as it is, life interest was created in her favour in respect of self-acquired properties by the will. The only question is whether such life interest created by will, was converted into full interest by virtue of subsection (1) of section 14 of the said Act of 1956.

12. On plain reading of sub-section 2 of section 14 of the said Act of 1956, the Appellant will not be entitled to claim benefit of sub-section 1 of the said section as the life interest was created in her favour under the will of Maruti. As the Appellant does have any other pre-existing right in the self-acquired property held by Maruti, sub-section 1 of section 14 will not have any application in favour of the Appellant.

13. As stated earlier, decree granted by the appellate court is only as regards self-acquired properties of Maruti and claim of respondent No.1 in respect of other properties in the hands of Maruti has been negatived. In the circumstances, no fault can be found with the impugned Judgment and decree. Second Appeal is accordingly dismissed with no order as to cost.

14. Parties to act on the ordinary copy of the order duly authenticated by court sheristedar.

JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 562 OF 1980.

DATE OF DECISION : 12TH JULY, 2004.

FOR APPROVAL AND SIGNATURE OF

THE HON'BLE SHRI JUSTICE A.S.OKA.

1. Whether Reporters of Local Papers may be allowed to see the Judgement ?

2. Whether to be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the Judgement ?

4. Whether this case involves a substantial question of law as to interpretation of the Constitution of India 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad & Goa Offices ?

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